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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Case No. 3:25-cv-03698-SI

**PLAINTIFFS' MOTION FOR AN ORDER REQUIRING PRODUCTION OF ADMINISTRATIVE RECORD(S)**

Under this Court's Civil Local Rule 16-5, the deadline for Defendants to serve and file the administrative record ("AR") with respect to all of Plaintiffs' Administrative Procedure Act ("APA") claims was July 28, 2025. Defendants did not meet that deadline or move for relief from that deadline. Instead, Defendants have taken the position (1) that the Local Rule does not require production of an AR where Defendants have moved to dismiss and (2) that Defendants cannot assemble an AR due to purported factual and legal questions regarding the existence of final agency action. ECF 226 (Joint Case Management Statement) at 7. As Plaintiffs explain below, these points lack merit, and indeed, reinforce the need for production of the record in this case. Plaintiffs therefore respectfully request an order requiring the swift production and filing of the AR with respect to the actions challenged by Plaintiffs under the APA.").

To foreclose any further dispute or debate as to what remains at issue and subject to Plaintiffs' APA claims, Plaintiffs have identified the agency actions, at a minimum, for which an AR must be produced below. Finally, as Plaintiffs have previously explained, exigent circumstances, including Defendants' ongoing and imminent implementation of unlawful actions, provide good reason to avoid any further delays by Defendants in producing documents pertinent to the agency action challenged here. Plaintiffs therefore request that Defendants be provided with a short compliance deadline. Plaintiffs were unable to resolve this dispute (both before and after the deadline) and understand that Defendants oppose this motion.

**DISCUSSION**

Plaintiffs bring claims pursuant to the APA against the Office of Management and Budget ("OMB"), Office of Personnel Management ("OPM"), Department of Government Efficiency ("DOGE"), and Federal Agency Defendants (in addition to claims regarding ultra vires action). ECF 1, 100; *see also* ECF 214, 228. Plaintiffs do not dispute that these APA claims are typically reviewed on an administrative record, triggering Civil Local Rule 16-5. Nor do Defendants: "Any such APA claim would need to be adjudicated based on the administrative record." ECF 222. Local Rule 16-5 provides Defendants 90 days from the date of service of a complaint to produce such a record. In this case, that deadline was July 28, 2025. ECF 25 (April 29, 2025 proof of service of summons and complaint). Defendants' failure to meet the July 28, 2025 deadline

violated the plain language of that rule.

1. This Court should reject Defendants' position that Local Rule 16-5 should be construed to permit a Defendant to avoid production of an AR by filing a motion to dismiss. Nothing in the rule expressly states that cases in which a Defendant moves to dismiss are an exception to production. Defendants point to the reference to filing and serving the AR along with an "answer" as the basis for their delay (ER 226 at 7), but that argument is inconsistent with both the general practice of this Court not to stay discovery pending motions to dismiss, and this Court's specific orders rejecting a stay of discovery pending resolution of Defendants' motion. ECF 214, 228. Even if there were any ambiguity in the language of the rule, this Court has the authority to require production of the record. There is no more valid reason to stay production of an AR pending resolution of Defendants' motion to dismiss than to stay discovery on Plaintiffs' ultra vires claims, and this Court has now already rejected that argument, twice. As with discovery, there is very good cause in this case, on the established record of Defendants' ongoing and imminent actions to implement the Executive Order and OMB, OPM, and DOGE approvals and directives, and ARRPs at issue, not to delay production of the record with respect to Plaintiffs' APA claims any further.

This Court should therefore conclude that Defendants' filing of a motion to dismiss rather than an answer does not relieve them of the obligation to serve and file the administrative record within 90 days of service.

2. Defendants have taken the position that they cannot comply with the AR deadline because Plaintiffs' claims "do[] not identify any distinct agency action and encompass[] many potential actions that have not even taken place (and might not take place)." ECF 226 at 7-8 (claiming impossibility given scope of Plaintiffs' claims). That there may be multiple actions taken by defendant agencies does not insulate Defendants from judicial review. *See New York v. Trump*, 133 F.4th 51, 68 (1st Cir. 2025) ("[W]e are not aware of any supporting authority for the proposition that the APA bars a plaintiff from challenging a number of discrete final agency actions all at once.").

Moreover, there are specific actions challenged by Plaintiffs that this Court and the Ninth

Circuit have already ruled are final agency actions—the OMB/OPM Memorandum, and any OMB/OPM approval of ARRPs—for which Defendants were clearly obligated to produce an AR, and yet did not attempt to comply with the deadline for production. ECF 124 at 42-43; *AFGE v. Trump*, 139 F.4th 1020, 1038-39 (9th Cir. 2025). Any claim of confusion regarding the nature of Plaintiffs' claims challenging these actions by OMB and OPM is disingenuous. Nor is there any mystery as to the nature of Plaintiffs' remaining claims, particularly in light of this Court's recent orders addressing the impact of the Supreme Court stay order on those claims (ECF 214, 228): Plaintiffs challenge the actions that Defendants, including OMB, OPM, DOGE, and the Federal Agency Defendants, have decided to take and have actually taken to implement Executive Order 14210, including approvals of ARRPs, and agency actions implementing those approved ARRPs. Information in possession of Defendants themselves, as to what actions have or have not been approved, decided upon, or implemented with respect to the Executive Order and ARRPs, should dispel any claimed uncertainty about the nature of those actions.[1]

But to speed things along, Plaintiffs identify the following agency actions for which an AR should be produced, *at a minimum*: the OMB/OPM Memorandum;[2] any OMB/OPM approval, whether formal or informal, of a Federal Agency Defendant ARRP (including but not limited to the ARRPs pertaining to the 31 RIFS at 10 *defendant* agencies referenced in Defendants' appellate filings, *see* ECF 228); any OMB, OPM, or DOGE directive to any Federal Agency Defendants regarding the implementation of Executive Order 14210 including: the closure of programs or offices (as the President characterized such orders: "all agency initiatives, components, or

[1] Defendants persist in feigning ignorance before this Court regarding what has or has not been approved by submitting declarations from individuals who work for OMB or OPM, rather than the Federal Defendant Agencies, who possess information regarding the actions they have submitted for approval and that have been approved, and have been implemented (ECF 224-1, 208-1, 141-1). When forced, those agency declarants (ECF 165) have revealed facts that support Plaintiffs.

[2] The Supreme Court granted a stay predicated on an initial assessment that the Memorandum is "likely" to be lawful. But that statement did not reflect consideration of Plaintiffs' APA claim that actions by OMB and OPM were arbitrary and capricious, since this Court did not rely on that claim in its preliminary injunction order. ECF 124 at 44. In any case, the Supreme Court's stay decision was not a final merits ruling, and an emergency stay order does not foreclose discovery on a pending claim, or the considered and reasoned assessment on a full and complete record.

operations that my Administration suspends or closes", ECF 371-1, Ex. A at 2) or the number, amount or specific positions to eliminate for purposes of "workforce reduction"; or any Federal Agency Defendant action taken to date to implement any ARRP, including but not limited to RIFs, or the closure of offices, programs and functions.

The actions known to Plaintiffs to have been approved and taken to date to implement Executive Order 14210 and the ARRPs at Federal Agency Defendants include RIF notices issued prior to the Court's May 9 TRO at the following agencies: HHS, HUD, Labor, State, AmeriCorps, GSA, and SBA. ECF 85 at 8. (Plaintiffs therefore understand, on these facts, some version of the ARRPs at these agencies were in fact approved). And, subsequent to the Supreme Court's stay order: the implementation of agency reorganization and execution of prior RIF notices separating employees at HHS; the implementation of agency reorganization and RIF of thousands of employees of the State Department; the reorganization and RIF of employees of EPA; the reorganization of USDA; and the RIF of employees at the National Science Foundation.

3. The requirement that the federal government disclose the administrative record to permit proper judicial review is a bedrock principle of administrative law:

> [I]n order to permit meaningful judicial review, an agency must "disclose the basis" of its action. *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167–169, 83 S.Ct. 239, 9 L.Ed.2d 207 (1962) (internal quotation marks omitted); *see also SEC v. Chenery Corp.*, 318 U.S. 80, 94, 63 S.Ct. 454, 87 L.Ed. 626 (1943) ("[T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.").

*Dep't of Com. v. New York*, 588 U.S. 752, 780 (2019). As this Court has previously concluded, Defendants' objections to producing factual information regarding their actions rest on self-serving arguments prematurely construing the facts and law in their favor. ECF 228 at 5 ("Much of what defendants argue puts the cart before the horse. They essentially urge that plaintiffs cannot obtain the discovery they seek because plaintiffs have not yet proven their case. What plaintiffs seek to prove their case is solely within defendants' possession, and yet defendants seek to keep this information secret."). Defendants' arguments that the Court should simply adopt their version of the facts without allowing plaintiffs to review the factual record is not a persuasive basis to deny the prompt production of a required administrative record, a record that will facilitate the Court's

ability to assess the legality of Defendants' actions.

4. This Court has already decided that documents such as the ARRPs, and communications between OMB, OPM, DOGE and Federal Agency Defendants will help shed light on the facts and, ultimately, Plaintiffs' claims. ECF 214, 228. The Court's conclusions apply equally to an AR that would contain those documents. *Cf. Swedish Am. Hosp. v. Sebelius*, 691 F.Supp.2d 80, 88 (D.D.C. 2010) (denying motion to dismiss and granting motion to compel production of the administrative record because, "[w]ithout the administrative record, the court is unable" to assess whether agency action is arbitrary and capricious); *Hamal v. U.S. Dep't of Homeland Sec.*, No. CV 19-2534, 2020 WL 2934954, at *4 (D.D.C. June 3, 2020) (denying motion to dismiss because, "without fully reviewing the entire administrative record, it would be premature to declare that the agency acted reasonably"). This is all the more true where, as here, Defendants profess to be eschewing factual representations about their actions (ECF 117), yet persist in making factual representations to the Court regarding OMB/OPM approvals (or lack thereof), and the lack of final agency decisions and actions.

5. A short deadline for production is appropriate for several reasons.

a. Plaintiffs filed their complaint months ago, on April 28, 2025, and Defendants have been on notice of the deadline set forth in the Local Rules for months.

b. Defendants' non-compliance is part of an established pattern to prevent Plaintiffs and this Court from accessing the facts regarding Defendants' actions implementing Executive Order 14210. As this Court has now repeatedly recognized, the "the need for accurate fact-finding in this litigation" is significant, and is underscored by Defendants' attempt to shield their actions from judicial review. ECF 214 at 7; ECF 228 at 3; ECF 232 at 2. And, that need is only heightened by the recent revelation that Defendants' affirmative factual representations to the Supreme Court and Ninth Circuit were not, in fact, accurate. ECF 228, 232.

c. As Plaintiffs have previously established, Defendants' implementation of the Executive Order through agency actions challenged as unlawful is ongoing. ECF 176. In the context of ongoing and imminent action implementing the Executive Order directing agencies to downsize and dismantle the federal government, the Court should not countenance Defendants' attempts to

tie plaintiffs' hands in presenting to the Court the case for any further injunctive relief warranted by law.

d. Finally, it is fair to anticipate, given Defendants' factual denials to date regarding the approval and implementation of actions pursuant to the Executive Order, that there will be disputes with respect to the content of any AR(s) that Defendants produce. Good cause exists to move matters forward quickly, so as to avoid further delay.

## CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that this Court order Defendants to produce the Administrative Record of agency action subject to Plaintiffs' claims in this litigation, including but not limited to: the OMB/OPM Memorandum; any OMB/OPM approval, either formally or informally, of any Federal Agency Defendant ARRP; any OMB, OPM, or DOGE order to any Federal Agency Defendants regarding the implementation of Executive Order 14210 including but not limited to directives with respect to the closure of programs or offices, or elimination of positions, or number or amount of positions to reduce at any Federal Agency Defendants; and Federal Agency Defendants' actions taken to implement any ARRP, including but not limited to RIFs, or the closure of offices, programs and functions.

Respectfully submitted,

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